



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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Ref: 8RA

JUN 02 2009

Mr. Jeremy Nichols, Director of the Climate Change Program
Wild Earth Guardians
1536 Wynkoop Street, Suite 301
Denver, CO 80202-1129

CERTIFIED MAIL RETURN RECEIPT REQUESTED

Re: EPA Response to Citizen Petition to Revise Colorado's Emission Notice and Permit
Exemptions for Internal Combustion Engines Powering Portable Drilling Rigs

Dear Mr. Nichols:

We have completed our review of your "Citizen Petition to EPA to Require Revision of the Colorado State Implementation Plan (SIP) Provisions Relating to Stationary Internal Combustion Engines in Powering Portable Drill Rigs" submitted by Rocky Mountain Clean Air Action, dated May 23, 2007. Specifically, the Petition requests that EPA require Colorado to revise Air Quality Control Commission ("AQCC") Regulation Number 3, Part A § II.D.1.1 and Part B § II.D.1.c.(i) relating to stationary internal combustion engines that power portable drill rigs to require the reporting of emissions and to subject the engines to permit requirements.

EPA has carefully considered the Petition and its attached exhibits. We are denying your request as we have concluded, as described below, that the engines in question are typically defined as non-road engines under 40 CFR 1068.30 and, therefore, are not subject to stationary source permitting requirements. Additionally, in consideration of section 302(z) of the Clean Air Act (CAA), these particular engines would also not be subject to Prevention of Significant Deterioration (PSD) permitting requirements.

The Petition requests that EPA require Colorado to regulate drill rig engines. While drill rig engines may be a source of air pollution that does not compel EPA to require Colorado to revise their State Implementation Plan (SIP) in order to further regulate them. The petitioner is primarily concerned with oxides of nitrogen (NOx) from drill rig engines. NOx emissions are known to contribute to particulate matter (PM) and ozone pollution. Colorado is taking actions to ensure that the applicable ozone National Ambient Air Quality Standard (NAAQS) is being achieved and maintained by its preparation of a SIP revision to reduce the level of ozone in the Denver/North Front Range (NFR) area in order to attain the 1997 8-hour ozone NAAQS. A detailed plan to reduce ozone levels was developed by the Colorado Air Pollution Control Division, along with the Regional Air Quality Council, Denver Regional Council of Governments, and the North Front Range Metropolitan Planning Organization. The resulting attainment plan was submitted by the Regional Air Quality Council to the Colorado AQCC and

was approved on December 12, 2008, with Colorado legislative review expected by no later than early May 2009, and as per Court settlement, submitted to EPA by no later than July 1, 2009.

In addition, we note that Colorado operates and maintains an EPA-approved air quality monitoring network and program that ensures that the applicable PM, ozone, and other NAAQS are being properly evaluated. Since Colorado is already taking action to achieve and maintain the 1997 8-hour ozone NAAQS (as described above) and is not in violation of the PM₁₀ or the PM_{2.5} NAAQS, EPA will not require the State to take further action at this time. However, once EPA completes and finalizes legal designations for the 2008 8-hour ozone NAAQS, and if the Denver/NFR area is designated as nonattainment, the State will be required to consider additional emission control strategies in order to achieve attainment.

The Petition also states that EPA should require Colorado to regulate drill rig engines to ensure compliance with the PSD program. Pursuant to 40 CFR Part 52, §52.21(a)(2), the requirements of the Federal PSD program are applicable to any "major stationary source." Under CAA 302(z) non-road engines are specifically excluded from the definition of stationary sources. As explained below EPA finds that the drill rig engines referred to in the subject petition are non-road engines and therefore not subject to PSD requirements.

In addition, the petition lacked adequate information for EPA to determine whether any of the internal combustion engines referred to are "stationary engines" or "non-road engines." EPA understands that these engines are typically located on wheeled trucks or trailers that move to various drilling sites. After a well is drilled the truck or trailer and the associated engine and drilling equipment are moved to a new drilling location. There is inadequate information in the Petition to determine whether any of the engines and associated drilling rigs stay in one location long enough to be considered stationary engines. Given this lack of information EPA cannot determine whether any of the drill rig engines would be classified as stationary engines. See the definitions of stationary and nonroad engines in 40 CFR 60.4219 and 40 CFR 1068.30¹.

¹ 40 CFR 1068.30 states that a non-road engine means:

(1) Except as discussed in paragraph (2) of this definition, a non-road engine is any internal combustion engine:

(i) In or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers); or
(ii) In or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers); or
(iii) That, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Indicia of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.

(2) An internal combustion engine is not a non-road engine if:

(i) The engine is used to propel a motor vehicle, an aircraft, or equipment used solely for competition, or is subject to standards promulgated under section 202 of the Act (42 U.S.C. 7521); or

(ii) The engine is regulated by a federal New Source Performance Standard promulgated under section 111 of the Act (42 U.S.C. 7411); or

(iii) The engine otherwise included in paragraph (1)(iii) of this definition remains or will remain at a location for more than 12 consecutive months or a shorter period of time for an engine located at a seasonal source. A location is any single site at a building, structure, facility, or installation. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced will be included in

The CAA Section 209(e) prohibits states from establishing emission standards to regulate new non-road engines. However, CAA 209(e) does allow states to adopt standards that are identical to California standards where EPA has issued a waiver of preemptions under CAA 209(e). EPA cannot require Colorado to regulate the drill rig engines because Colorado is prohibited from establishing emission standards for non-road engines. However, Colorado may adopt standards identical to California standards for the same engines.

While EPA will not be requiring Colorado to further regulate drill rig engines, Colorado can regulate the use and operation of such engines as described in 40 CFR Part 89, Appendix A to Subpart A, which states:

"EPA believes that states are not precluded under section 209 from regulating the use and operation of non-road engines, such as regulations on hours of usage, daily mass emission limits, or sulfur limits on fuel; nor are permits regulating such operations precluded, once the engine is no longer new. EPA believes that states are precluded from requiring retrofitting of used non-road engines except that states are permitted to adopt and enforce any such retrofitting requirements identical to California requirements which have been authorized by EPA under section 209 of the Clean Air Act."

In addition, states can institute voluntary retrofit programs which greatly reduce diesel engine emissions. A wealth of information regarding this option is available through EPA's National Clean Diesel Campaign (NCDC) which also contains verified emission reduction technologies. Please see the NCDC website for further information [<http://www.epa.gov/otaq/diesel/index.htm>].

If you have any questions or comments, please contact Callie Videtich at (303) 312-6434.

Sincerely,



Carol Rushin
Acting Regional Administrator

cc: Paul Tourangeau, Director, Colorado Air Pollution Control Division

calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. A seasonal source is a stationary source that remains in a single location on a permanent basis (i.e. , at least two years) and that operates at that single location approximately three months (or more) each year. This paragraph (2)(iii) does not apply to an engine after the engine is removed from the location.